

COUNTY OF KAUAI
Minutes of Meeting
Open Session

Board/Committee:	LIQUOR CONTROL COMMISSION	Meeting Date	March 1, 2018
Location	Mo'ikeha Building, Meeting Room #3	Start of Meeting: 3:58 p.m.	End of Meeting: 5:42 p.m.
Present	Chair William Gibson, Vice Chair Paul Endo; Members: Shirley Akita, Jean Iida, Maryanne Kusaka, Gerald Matsunaga, and Gary Pacheco; Also: Liquor Control Staff: Director Gerald Rapozo, Private Secretary Cherisse Zaima; County Attorney Mauna Kea Trask, Deputy County Attorney Cameron Takamura		
Excused			
Absent			

--

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Gibson called the meeting to order at 3:58 p.m. with 7 members present, constituting a quorum.
Roll Call	Director Rapozo called roll, noting 7 members were present.	
Approval of the Agenda		Ms. Akita moved to approve the agenda. Ms. Iida seconded the motion. Motion carried 7:0.
Approval of the Minutes	<u>APPROVAL OF MEETING MINUTES:</u> Executive Session minutes of February 1, 2018 Open session minutes of February 15, 2018	Mr. Pacheco moved to approve the minutes. Ms. Iida seconded the motion. Motion carried 7:0.

<p>1.</p>	<p><u>DIRECTOR'S REPORT:</u></p> <p>a) <u>INVESTIGATORS' REPORTS</u></p> <p>b) <u>INCOMING COMMUNICATIONS:</u></p> <ul style="list-style-type: none">(1) From Jackson Family Enterprises(2) From Avid Marketing Group(3) From Delicato Family Vineyards(4) Disturbance Report from Kalapaki Joe's Poipu, Lava Lava Beach Club <p>c) <u>OUTGOING COMMUNICATIONS:</u></p> <ul style="list-style-type: none">(1) To Jackson Family Enterprises(2) To Avid Marketing Group(3) To Delicato Family Vineyards(4) To All Wholesale Licensees <p>d) <u>EMPLOYEES IN LICENSED PREMISES:</u></p> <p>Managers and Assistant Managers – See Attachment</p> <p>e) <u>ACTIONS OF THE DIRECTOR:</u></p> <ul style="list-style-type: none">(1) BEACH HOUSE RESTAURANT(2) KUKUIULA STORE(3) MERRIMAN'S(4) PRINCEVILLE WINE MARKET(5) WRANGLER'S RESTAURANT(6) KILOHANA(7) ROTARY CLUB OF POIPU BEACH <p>f) <u>INFORMATIONAL MATTERS:</u></p>	<p>Ms. Akita moved to accept Items 1(a) through 1(f). Ms. Kusaka seconded the motion. Motion carried 7:0.</p>
-----------	--	---

2.	<p><u>VIOLATION REPORTS:</u></p> <p>a) <u>LAVA LAVA BEACH CLUB:</u> Violation of Rule 7.13 Fight and disturbance reports.</p> <p>b) <u>SHERATON KAUAI RESORT LINK CAFÉ:</u> Violation of Rule 10.2 Manager on duty, qualifications.</p>	<p>Ms. Akita moved to call the licensees for violation hearing. Mr. Pacheco seconded the motion. Motion carried 7:0.</p>
3.	<p><u>DISCUSSION AND DECISION MAKING:</u></p> <p><u>KAUAI DISTILLING COMPANY:</u> The hearing for Application No. 2018-027 filed on August 15, 2017 by LBD Coffee, LLC dba Kauai Distilling Company for a New Manufacturer Other Specified Liquor license located at 5907 C Kawaihau Road, Kapaa, Kauai, Hawaii was opened on November 2, 2017 and continued to December 7, 2017 at 4:00 p.m. or shortly thereafter in Meeting Room #3 of the Līhu‘e Civic Center, Mo‘ikeha Building, 4444 Rice Street, Līhu‘e, Kauai, Hawaii; hearing closed December 7, 2017 and taken under advisement and deferred for decision making to March 1, 2018.</p> <p>Director Rapozo explained that subsequent to the hearing held on December 7, 2018, it was brought to the Department’s attention by Kawaihau resident Mr. Jerry Driscoll, that the radius submitted by the applicant was incorrect. Investigators Kenneth Herman and Alisha Brown followed up with an investigation which included working with the County of Kauai’s Real Property Tax office. It was concluded that three property owners were missing from the master list submitted with the initial liquor license application.</p> <p>Director Rapozo stated the Department’s recommendation would be that the applicant resubmit the radius map and list of property owners, and redo the mailing notification.</p>	

	<p>Mr. Jacob Delaplane, counsel for the applicant, was present on behalf of LBD Coffee, LLC.</p> <p>Commissioner Matsunaga asked whether the applicant concurs with the statements made by the Director that the radius was incorrect, and that three property owners were not listed. Mr. Delaplane stated he is unsure whether he agrees with it, noting that he did generate the radius map based off of the tax map records and map that are available online using the map scale directly off of the County of Kauai's Tax Map website. He added that he was generous with the radius, and what he submitted encompassed more than 500 feet. He noted that there is one property that he knows of that may not have been included in the radius map, but pointed out from his perspective as legal counsel for the licensee that the purpose of the regulations with regard to the radius is to ensure proper notice is mailed out to a sufficient amount of people within that radius. He continued by stating that The Hawaii Revised Statutes states as long as 75 percent of those people within the 500 foot radius are notified, then the applicant is in compliance. (HRS 281-57(c)). Mr. Delaplane stated that since the applicant has satisfied that regulation, even though three people are missing from that radius, they have still done what is sufficient under that statute.</p> <p>Commission Matsunaga acknowledged Mr. Delaplane's response, but again asked whether or not he agreed with the statements made by the Director that the radius was incorrect. Mr. Delaplane stated that he believes the radius they submitted is correct, and disagrees with the Director's statements.</p> <p>Commissioner Akita asked whether the information regarding the discrepancies with the radius presented to the applicant to which Mr. Delaplane replied yes, he had received an email from Director Rapozo, which listed the three addresses that were missing. He noted that from speaking with Investigator Herman he was made aware about a month ago</p>	
--	--	--

that it was being looked into. Commissioner Akita expressed confusion on what exactly Mr. Delaplane disagreed with and asked for clarification. Mr. Delaplane explained that he disagreed with the findings that their radius map submitted by the applicant was incorrect. He added that he realizes there is a difference in the radius map he originally submitted versus the one that was provided before the last hearing, which was a corrected list. The corrected radius list coincided with the mailing list that certifies who the applicant mailed notices out to. Mr. Delaplane stated that the mailing list of who had been sent notices has always been correct, and he is of the opinion that the mailing list should be considered the control or master list of who was required to receive a notice under the law. Mr. Deplane stated he feels they did the list correctly, that he drew the radius map correctly and indicated specific properties on that map correctly, and that notices went out to the appropriate individuals within the radius, which he feels is definitely in compliance with the statute.

Commissioner Akita asked for counsel's advice. County Attorney Trask read HRS 281-57(c)(1) into the record, and asked to clarify that Mr. Delaplane feels that he has satisfied the requirement for the 100 foot radius to which Mr. Delaplane replied yes. Attorney Trask also asked to clarify that though there is a question of whether or not all of the parcels within the 500 foot radius were included on the list, and though the applicant disagrees with the Department's findings, Mr. Delaplane maintains that he has met the two-thirds requirement for the 500 foot radius to which Mr. Delaplane replied yes.

Attorney Trask asked to clarify that the position of the Department is that though some names were missing from the list, the applicant has fulfilled the two-thirds requirement. However, the Department suggests that as consistent with past practice, the applicant should notify everyone.

	<p>Director Rapozo referenced HRS 281-57(c) that states: <i>For purposes of this section “master list” means every owner and lessee who would otherwise be required to receive notice of the public hearing according to the requirement of paragraphs (1), (2), and (3).</i> He stated for clarification that at the application level, this is when every property owner should be listed, and that the 75 percent, or two-thirds requirement comes later during the notification process. At the time the application is applied for, the applicant must identify <u>every</u> property owner.</p> <p>Mr. Delaplane rebutted that under the licensing rules of the commission, they applicant is required to submit a U.S. Postal service list that shows who notices were mailed out to. He feels that mailing list should serve as the master list. He asked that the Commission take a step back and look at what the rules are for, and what are they trying to accomplish, which is to determine who is within the 500 foot radius, and to ensure at least two-thirds of those people are notified. He believes the list they submitted is a proper list, and can serve as the master list. He commented that there is nothing magic about an excel spreadsheet, but the magic is who is required to receive notification under the law, which he believes they have satisfied.</p> <p>Attorney Trask stated that it is an interpretation, which is the argument. Given that, it is the Commission's opportunity to make a decision regardless. The Department has contacted Mr. Delaplane, and made him aware of this suggestion; however, the applicant has chosen to proceed. It is up to the Commission whether or not to grant or deny the license within their discretion.</p> <p>Commissioner Akita noted that during the public hearing, there were a number of people present who expressed feelings of opposition to this distillery, and at that time the Commission recommended the applicant meet with the concerned residents. She asked if that meeting has occurred. Mr. Delaplane stated there was an attempt to have that happen, and the offer was</p>	
--	---	--

	<p>extended several times but not acted upon because there was significant push-back. Mr. Delaplane stated that Tai Erum was present, and could speak on that, noting things were preceding in an unorthodox manner. Commissioner Akita asked for clarification on how the invitation was extended to which Mr. Delaplane replied by phone and by mail. Commissioner Akita asked whether the invitations were sent using the same mailing list to which Mr. Delaplane replied the invitations were sent to the initial individuals they were in contact with to acknowledge the confusion about the distillery.</p> <p>Commissioner Akita recalled the concerns expressed at the last hearing, and wants to be sure those concerns have been addressed since they will be neighbors. Mr. Delaplane listed some of the concerns that were brought up such as fire safety and noise. He noted that he had listened to a recording of a KKCR interview that was done with Linda Driscoll, who he says made all sorts of allegations about what this operation was going to be and involve. He feels that even the wording on the petition that was submitted at the last hearing seemed like a disinformation campaign about the nature of the operation. Commissioner Akita asked for clarification that residents present at the last hearing were sent letters, and that no one responded to which Mr. Delaplane replied they did respond that they were not interested in meeting with the company.</p> <p>Commissioner Akita stated again that the residents were very vocal, and she wants to be assured that the people that live there had an opportunity to talk it over with the owner. There seemed to be a lot of miscommunication or no communication at all. Since the Commission had suggested that the applicant meet with the residents to come up with some agreements, she had hoped today would have had that outcome. Attorney Trask stated that at the last hearing, there were a lot of concerns raised about land use, nuisance, and agriculture issues. They were redirected to the appropriate liquor statutes, at which time the question with the radius as well as the alleged</p>	
--	--	--

	<p>inaccuracies of the petition were brought forth. To address allegations by the applicant that some of the names on the petition were people that did not live in that area, and are not the appropriate protesters, investigators went out to clarify the information. Nonetheless, the residents did not want to meet.</p> <p>Investigator Kenneth Herman explained to the Commission that the original petition contained misleading language in the header, and the names listed were questioned. Because of that he and investigator Alisha Brown went door to door to confirm with each person listed on the petition that they lived in the area, and clarify that what they were opposed to was a distillery, not a bar. Everyone they spoke confirmed they were legal residents of the area, and that they were still opposed to the distillery. Attorney Trask asked that in confirming the petition, was one of the reasons to also address the 51 percent rule, and whether or not it mandated a denial in this case. Investigator Herman replied that the initial investigation was just to confirm that the names on the petition were of people who lived in the area. Attorney Trask asked for clarification that the Department has determined that the Commission is not mandated to deny the application because of the 51 percent ruling to which investigator Herman replied that Director Rapozo was looking into that. Attorney Trask stated he does not believe that there was a sufficient amount of protest to mandate a denial, but he will check with Director Rapozo.</p> <p>Commissioner Akita stated for clarification that the decision would be the Commission's discretion because they are not bound by the 51 percent majority protest ruling.</p> <p>Attorney Trask asked Director Rapozo whether the Commission today is facing a situation whereby a majority of the registered owners or lessees have protested, and therefore are mandated to deny to which Director Rapozo replied no, not at this time.</p>	
--	--	--

Investigator Herman stated that after they confirmed the signatures on the petition to be valid, he and investigator Brown began an investigation in correlation to confirm whether the applicant's radius was correct or not. The three missing names were noted, and a corrected radius map was generated by the County of Kauai Real Property Tax office. Investigator Herman noted he thinks part of the problem with the original map was the points of measurement they used from the corners of the proposed building.

Attorney Trask asked to clarify whether the discrepancy was based on the statute that reads: *within a distance of 500' from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment.* With premises being defined as: *the building and property that houses the establishment for which a license has been or is proposed to be issued.* He asked if it was measured from the property line, or the building line to which investigator Herman replied he measured from the four corners of the actual proposed building, which is his understanding of the rule and is consistent with what he had been instructed to do in the past.

Commissioner Matsunaga asked to clarify that the findings of the investigation is not consistent with the applicant's statement regarding the radius to which investigator Herman replied correct; they found three properties just outside of the radius the applicant submitted. Mr. Delaplane stated he did not see a copy of the map created during the investigation.

Tai Erum, Manager of LBD Coffee, LLC was present on behalf of the applicant and explained that after the first hearing he was given the opportunity to meet with the neighbors since there had been much testimony due to lack of information or misinformation. He provided information in the letter to address the safety concerns and other misinformation, and extended an invitation to meet with the residents. He noted that the letter

	<p>contains phone numbers and email addresses for multiple people including the owner Les Drent. They did not receive any reply to either of the two letters that were sent out. However, Mr. Erum stated he had been communicating with Linda Driscoll who offered to be the bridge between him and the neighbors to try and find a good date for the community meeting, even offering to have it at her home. When it came down to the final hour, Mr. Erum was set on having the meeting even if it was only with one person, but was then told by Ms. Driscoll that no one would want to attend unless Les Drent, the owner, was present. Mr. Erum expressed that though Mr. Drent is the owner, he would be the on-site manager that they would see on a day to day basis which is why he was the one trying to arrange the community meeting. He pointed out the meeting did not happen, but not for a lack of trying. He feels maybe he was a bit deceived by Ms. Driscoll in her willingness to hear what he had to say since after speaking with her, her husband put the petition together which included misinformation. Mr. Erum stated that the Driscoll's were also going door to door, making facebook posts, and disseminating misinformation in an attempt to get people to sign the petition. Additionally, the Driscoll's participated in a radio interview with KKCR, spreading bad information.</p> <p>Commissioner Akita asked whether anyone other than the Driscoll's had contacted him to which Mr. Erum replied yes, that he was contacted by Matthew Santos, who was present at the first hearing. Mr. Santos thanked him for the invitation but did not wish to participate in the meeting. The other people were not interested in talking with Mr. Erum. Though he attempted to communicate with the community, he did not receive one phone call, one letter, or one email, which he found very disappointing as he felt he made great effort.</p> <p>Commissioner Endo asked whether these letters were sent out to everyone on the mailing list to which Mr. Erum stated yes, except for the three that were allegedly missed. The list of names included in the cc: of the letter are</p>	
--	---	--

those who were present at the last hearing in opposition. Commissioner Endo noted that the owner's cell phone number is listed on the letter, and questioned why Mr. Drent would not meet with the residents. Mr. Erum explained that the timing of the meetings would have been when Mr. Drent was out-of-state coaching his son in hockey; he has still not returned to Hawaii. Additionally, it was difficult in getting Ms. Driscoll to give him a definite date for the meeting.

Commissioner Matsunaga asked whether the applicant agrees or disagrees with the radius provided by investigator Herman to which Mr. Delaplane replied that it is a matter of scale, noting the points used where the proposed building will be; the site is currently blank with no building there yet. The drawing he used was their own, and differs from the drawing used by investigator Herman. Mr. Delaplane explained that the map provided by investigator Herman appears to have used the overlay of the plans that were submitted to the Planning department. He noted that unlike the map he submitted, the map provided by investigator Herman does not appear to have a scale; the scale Mr. Delaplane used was from the Google map on the County of Kauai Tax Map website; the plugins used by the County are directly from Google maps. Mr. Delaplane noted that in his initial conversations with the Department, there was some concern that his radius was too large so when he got the email saying three names were missing, that is the first time he had heard that his radius was too small. He felt it was kind of ridiculous that his radius was considered too big since it would cover more people than necessary. He added that as noted by the County Attorney, it is a matter of interpretation, and when you look at the purpose of providing this radius, it is for notification for people to attend, and to figure out what the number is to determine the 51 percent majority ruling; he stands by what they did. Mr. Delaplane clarified his answer that he does not know whether he agrees with investigator Herman's map as it does not include a scale.

	<p>Commissioner Matsunaga asked that when Mr. Delaplane submitted the application along with the master list would he have excluded the three properties to which Mr. Delaplane stated that he is not disputing that the three properties are there, but he is unsure they are properly located within the 500 foot radius. Mr. Delaplane states if he had to guess, he feels that is likely why the legislature left it open with the two-thirds rule because there is a discrepancy. Commissioner Matsunaga then pointed out that HRS 281-57 states that the applicant shall provide a master list of 100 percent of addresses; it's not discretionary, it's mandatory. Mr. Delaplane stated he believes they did so.</p> <p>Chair Gibson asked that if the radius was drawn larger than required, how they manage to miss those three properties, to which Mr. Delaplane replied he did not know because it is his stance that everyone included on the list he provided was within the 500 foot radius. He noted that his original submission had a radius measuring from the edges of the property, which made it a much larger list of names, but at the direction of the department it was narrowed down to measure from the four points of the building.</p> <p>Commissioner Kusaka asked about the Planning permit that is on hold. Mr. Delaplane explained that they were originally approved for general agriculture use as it is zoned. There is no permit required by the Planning department required by the Planning Department for a distillery as it is an agricultural activity. They do have a difference of opinion with the Planning Department in terms of what they believe is allowed on agricultural land, and have filed for a declaratory judgement action, but they have not filed a lawsuit against the County. That declaratory judgment has to do with retail sales of value-added products on agricultural land.</p> <p>Commissioner Kusaka asked if it is their intention to sell things from this property to which Mr. Delaplane stated yes, but not to have a retail shop, just to sell the agricultural products. Any sales would occur within the same</p>	
--	--	--

	<p>building that houses the distillery, and is far away from the neighbors. Mr. Delaplane pointed out several areas of the map that show empty lots, noting a nearby motorcycle/car repair shop that he thinks is unpermitted. He pointed out that the entire area is zoned agriculture though it has been populated as a residential area.</p> <p>Commissioner Akita asked how many feet away would the closest neighbor be to which Director Rapozo replied according the investigator's report the closest residential building is approximately 200 feet south of the proposed premises.</p> <p>Commissioner Kusaka asked about smoke, fumes, or ash that will come from processing. Mr. Delaplane stated there is no ash, and addressed some concerns he heard about with airborne dust igniting, etc. However, the process of distilling they will be utilizing will not create that kind of hazard. The distilling equipment they will be using does not have any kind of open flame, and utilized internal heating elements similar to a water heater. Mr. Erum added that the most you would smell would be during the mashing process when the corn is being heated, but that is a mild sweet aroma. There is no chimney associated with the distillery, but they do roast coffee as well, which emits the smell of coffee; though it was not required, the applicant purchased an afterburner for the coffee to help reduce the amount of smoke it releases. Mr. Erum stated the distilling process would go almost completely unnoticed.</p> <p>Commissioner Matsunaga asked to clarify whether the County of Kauai Real Property Tax Map program to determine the radius to which Mr. Delaplane replied yes. Commissioner Matsunaga then asked investigator Herman how he determined his radius to which Mr. Herman replied that the Department did not have the map software at the time, so he depended on the County of Kauai Real Property Tax office whose staff came up with the map for him.</p>	
--	--	--

	<p>Investigator Herman, Mr. Delaplane, and the Commission went over details of the map, radius, and scale.</p> <p>Commissioner Akita asked how many letters were sent out to which Mr. Delaplane stated it coincides with the mailing list submitted to the Department.</p> <p>Commissioner Pacheco asked if the radius was determined by the property or the building to which Mr. Delaplane replied that the original radius he submitted was based on the property line, but as instructed by the Department, he reduced it to be measured from the points of the actual building. He added that the map provided by the investigators appears to have an overlay of the plans submitted to the Planning Department, which places the building slightly more to the left of where the building is represented on the applicants map. Mr. Delaplane stated he still feels they satisfied the statute, but if they did not, they would want a chance to resubmit.</p> <p>Member of the public, Muriel Morgan, was allowed to provide a statement to the Commission. Attorney Trask reminded Ms. Morgan that the public hearing on this application has been closed, but as a member of the public she has the right to speak on any agenda item.</p> <p>Ms. Morgan stated that she did respond to Mr. Erum's letter in message that he claimed he did not receive. The message expressed her continuing concerns, and stated that she would be interested in attending a meeting should one be scheduled; however, she noted she did not receive a response. She mentioned the applicant's plans for retail sales, and the use permit he has applied for with Planning. She provided a timeline of the current status of the application, and its various department approvals/denials. Ms. Morgan stated she feels Mr. Erum did not go out of his way to contact the</p>	
--	--	--

	residents, noting he should not have used a liaison as this is a very important issue for the community. Ms. Morgan expressed concern about the grist mill process which is what creates airborne dust.	
Executive Session	<p><u>EXECUTIVE SESSION:</u></p> <p>Pursuant to Hawai‘i Revised Statutes §§92-4 and 92-5 (a) (4) the purpose of this executive session is to consult with the Commission’s legal counsel on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities, and liabilities as they may relate to this item, deliberate and take such action as appropriate.</p>	Mr. Matsunaga moved to enter into executive session. Mr. Endo seconded the motion. Motion carried 7:0.
Return to Open Session		The meeting resumed in open session at 5:39 p.m.
3.	<p><u>DISCUSSION AND DECISION MAKING (cont’d.)</u></p> <p><u>KAUAI DISTILLING COMPANY:</u></p> <p>Commissioner Matsunaga stated the Commission has heard testimony from both the Department and applicant, and based on HRS 281-57 the applicant has the responsibility of providing a master list of 100 percent of the property owners and addresses within the radius. If there is a conflict between the Department’s version and the applicant’s version, under the Hawaii Administrative Procedure Act HRS 91-10(5) the burden is upon the applicant. He finds that the applicant has not proved by preponderance of the evidence that his version of the radius is correct.</p>	Mr. Matsunaga moved to deny the application. Mr. Endo seconded the motion. Motion carried 7:0.
Announcements	Next Scheduled Meeting: Thursday, March 15, 2018 – 4:00 pm, Mo‘ikeha Building, Meeting Room #3.	

Adjournment		Chair Gibson adjourned the meeting at 5:42 p.m.
-------------	--	---

Submitted by: _____
Cherisse Zaima, Private Secretary

Reviewed and Approved by: _____
William Gibson, Chair